

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT M. KIRZONCIC,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW
YORK,

Respondent.

No. 15-CV-0789 (KMK)

ORDER ADOPTING
REPORT & RECOMMENDATION

KENNETH M. KARAS, United States District Judge:

Petitioner Robert M. Kirzoncic (“Petitioner”) was charged with one count of criminal sale of a controlled substance in the third degree, a Class B felony pursuant to § 220.39 (1) of the Penal Law of the State of New York, in Dutchess County Court on October 21, 2011. (Affidavit of Bridget R. Steller, Esq. (“Steller Aff.”) Ex. 2 (Dkt. No. 8-2).) Petitioner waived indictment and pled guilty on November 18, 2011. (Steller Aff. ¶ 5.) On January 26, 2012, Petitioner was sentenced to five years of probation. (*Id.* Ex. 3 at 1 (Dkt. No. 8-3).) On November 27, 2012, Petitioner was charged with violating the terms of his probation by testing positive for opiates on eight occasions between April 30, 2012 and July 30, 2012 and failing to report to probation on four occasions between April 18, 2012 and September 10, 2012. (*Id.*) On June 12, 2013, Petitioner pled guilty to violating the conditions of his parole. (Steller Aff. Ex. 4 at 4–5 (Dkt. No. 8-4).) On July 18, 2013, the Petitioner was resentenced to a term of seven and one-half years of imprisonment followed by two years of post-release supervision. (Steller Aff. Ex. 6 at 10 (Dkt. No. 8-6).)

Following a direct appeal, the Second Department affirmed Petitioner’s conviction on December 4, 2013. *People v. Kirzoncic*, 112 A.D.3d 651 (2d Dep’t 2013). Petitioner’s leave to file an appeal was denied by the New York Court of Appeals on May 26, 2014. See *People v.*

Kirzonicic, 23 N.Y.3d 964 (N.Y. 2014), *reconsideration denied*, 23 N.Y.3d 1064 (N.Y. 2014).

On January 29, 2015, Petitioner filed the instant Petition for a Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254, seeking relief on three different grounds. (Dkt. No. 1.)

The case was referred to the Honorable Judith C. McCarthy (“Judge McCarthy”). (Dkt. No. 10.) On September 4, 2019, Judge McCarthy issued a Report and Recommendation (“R&R”) recommending that this Court deny the Petition in its entirety. (R&R 17 (Dkt. No. 13).) Petitioner has not filed any objections to the R&R.¹

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the Petition and R&R, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the R&R, dated September 4, 2019, is ADOPTED in its entirety.

ORDERED that the Petition is DISMISSED.

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court

¹ Judge McCarthy provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 8(b) of the Rules Governing Section 2254 cases, objections to the R&R were due within fourteen days from the receipt of the R&R, or seventeen days from the receipt of the same if the R&R was served upon the parties by mail, and that the failure to object or to request extensions of time to file objections within the relevant period of time would constitute a waiver of Petitioner’s right to appeal. (R&R 17-18.)

certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: October 2, 2019
White Plains, New York



KENNETH M. KARAS
United States District Judge